COURT No.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Cross Appeal/ Objection No. 358 of 2002

TO

Appeal from Order No. 295 of 2002

1. Smt. Gurjeet Kaur Deol W/O late Inder Pal Singh Deol
   R/O 12 Sahastradhara Road, Dehradun with
   Power of attorney.
2. Km. Raman Kaur Deol D/O late Inder Pal Singh Deol,
   Welham Girls High School, Dehradun.
3. Master Jasraj Singh Deol, S/O Late Inder Pal Singh
   St. George School, Barlowgnaj, Mussoorie,
   District Dehradun.
4. Smt. Gurdevi Kaur Deol, W/O late Jasmer Singh Deol,
   12-Sahastradhara Road, Dehradun.

..... **Claimant-Appellants.**

Versus

1. United India Insurance Company Limited,
   Divisional Office, 35/36 Tagore Village,
   Chakrata Road, Dehradun through
   Its Divisional Manager.

Respondent.

2. New India Insurance Company Limited,
   Astley Hall, Dehradun.
3. Shri Ajit Singh S/O Shri Kishan Singh,
   14-New Road, Dehradun.

..... **Proforma Respondents.**

Mr. L.P. Naithani, learned Sr. Advocate, Assited by Sri Rakesh Tapaliyal, Adv. Learned counsel for the appellants.

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Date 23rd August, 2004.

This cross appeal/objection has been filed by the claimant/applicants in A.O. No. 295 of 2002, preferred by Opposite Party-United India Insurance Company against the judgment and award dated 03-8-2004 passed by Motor Accident Claims Tribunal /Addl. District Judge, C.B.I., Dehradun (in short the Tribunal) in Motor Accident Claim Petition No. 43 of 1999, whereby the

Tribunal allowed the claim petition and awarded compensation amounting to Rs. 5,10,09,000/- along with interest @ 9% per annum from the date of filing of the claim petition till the date of payment against the United India Insurance Company.

Necessary facts are that the cross-objectors-claimants filed a claim petition before the learned Tribunal for compensation of Rs. 12,50,00,000/- under Section 166 of the Motor Vehicles Act (for short the Act) alleging therein that Indrapal Singh Deol (the deceased) came to India from California (USA) to meet his daughter on 25.10.1998 and on 29.10.1998, Inder Pal Singh lost his life in a motor vehicle accident between Dehradun and Chandigarh in village Rampur involving bus No. UP-07-H-3055 being driven rashly and neglignetly, which collided with his vehicle. Inderpal Singh was 38 years. He sustained fatal injuries and died on the spot. The deceased was Electronic Engineer and was getting salary of 1,80,000/- US $ per annum. He was survived by the claimants.

The Opposite Parties filed their statements and contested the case. Learned Tribunal framed necessary issues in the case.

After considering the material on record, the learned Tribunal came to the conclusion that the accident resulting into injuries and death of the deceased was caused due to rash and negligent driving by the driver of the offending bus and not due to own negligence of the deceased. The plea of non-joinder of necessary parties was answered in negative by the learned Tribunal. It also held that the O.P. No. 5 was a necessary party to the case but it was not liable for compensation. Issue No. 7 was answered in negative by the Tribunal against the O.P. Nos. 1 to 3. Ultimately, the learned Tribunal awarded compensation of Rs. 5,10,09,000/- in favour of the claimants against the appellant along with interest @ 9% per annum vide impugned judgment and award dated 3-08-2002.

At the outset, it may be mentioned here that the United India Insurance Company preferred an appeal, which was registered as Appeal from Order No.358 of 2002. In that Appeal, a preliminary objection was raised on behalf of the Claimant-respondents that the appeal preferred by the insurer was not maintainable, therefore, the appeal was dismissed by this Court on 23.9.2003. It was observed by the Division Bench of this Court that the only grounds as envisaged under Section 149(2) of the Act were open to the insurer. There was no permission under Section 170 of the Act granted by the Tribunal, therefore, in view of the pronouncement of the Apex Court in the case of ***" National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others"[(2002) 7, Supreme Court Cases, 456],*** *the Division Bench of this Court held that the conditions precedent to Section 170 are not satisfied, therefore, the appeal is not maintainable as such. Accordingly, the appeal was dismissed as not maintainable.*

While the appeal was dismissed, the cross-objection filed by the claimant-respondents (appellants) was not pressed by the learned counsel for the claimants.

It was argued before us that the S.L.P. filed by the Insurance Company against the Division Bench judgment of this Court was also dismissed and the Hon'ble Apex Court also confirmed the finding of the Tribunal as well as the Appellate Court.

It was submitted on behalf of the cross-objectors (claimants) that the learned Tribunal erred in applying the ratio of the Apex Court judgment in the case of ***United India Insurance Co. Ltd. etc. etc Vs. Patricia Jean Mahajan & Ors, etc. [2002(2) Apex Court Judgments, 100 (S.C.)]*** while computing the amount of compensation and the multiplier applied in the present case was on the lower side. We have considered the submissions of the claimants and have carefully perused the impugned judgment and award. The contention of the claimant-cross-objectors is not tenable,

because in the aforesaid case, the Hon'ble Apex Court in that case observed in paragraph no. 19 that ***"Looking to the Indian ecomony, fiscal financial situation, the amount is certainly a fabulous amount though in the background of American conditions it may not be so. Therefore, where there is so much of disparity in the economic conditions and affluence of the two places viz the place to which the victim belongs and the place where the compensation is to be paid, a golden balance must be struck somewhere, to arrive at a reasonable and fair mesne."*** *And in paragraph no. 20 the Apex Court held that* ***" We, therefore, hold that ordinarily while awarding compensation, the provisions contained in the Second Schedule may be taken as a guide including the multiplier, but there may arise some cases, as one in hand, which may fall in the category having special feature or facts calling for deviation from the multiplier usually applicable."*** The victim of the case before the Apex Court was in the medical profession and became an American National. In the present case, the victim Inder Pal Deol was posted as Director in an American Company drawing a salary of 1,80,000/- US$ per annum. In our opinion, present case is squarely covered by the Case of Patricia Jean Mahajan (supra). The income of the deceased Inder Pal Singh Deol was 1,80,000/- US $ per annum. The Tribunal applied exchange rate of Rs. 42-50, thereby the annual come was Rs. 76,50,000/- Multiplier of 10 was applied thereby total loss of income was arrived at Rs. 7,65,00,000/-. Out of this amount, 1/3rd was deducted towards personal expenses of the deceased, thereby the remaining comes to 7,65,00,000 (-) 2,55,00,000 = 5,10,00,000/-. The learned Tribunal awarded further sums of Rs. 2,000/- towards funeral expenses, 2,000/- towards loss of estate and Rs. 5,000/- towards loss of consortium, thereby total compensation of Rs. 5,10,09,000/- was awarded to the claimants.

Having considered the case from all the four corners and in the light of the Apex Court judgment in the case of Patricia Jean Mahajan (supra), the compensation award is just. We do not find favour with the contention of the claimants-cross-objectors.

For the reasons and the discussion aforementioned, the cross-appeal is liable to be dismissed.

The cross-appeal is hereby dismissed. No order as to costs.

(B.S. Verma, J.) **(P.C. Verma, J.)**

RCP